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139 N.E. LINCOLN STREET
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Phone: (503) 648-6677
Fax: (503) 648-1091

Attorneys for Defendant Costco Wholesale Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

STATE FARM FIRE AND CASUALTY
COMPANY, as subrogee of Thomas and
Lisa Klotter,

Civil No.

Plaintiff,

NOTICE OF REMOVAL OF ACTION;
UNDER 28 USC §1441(b)
(DIVERSITY)

COSTCO WHOLESALE CORORATION, and
DANZE, INC.,

Defendants.

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT, DISTRICT OF
OREGON, PORTLAND DIVISION:**

PLEASE TAKE NOTICE that, pursuant to 28 USC §§1441 and 1446, Defendant
Costco Wholesale Corporation (“Defendant Costco”) hereby removes to this court the case
now pending in Lane County Circuit Court as *State Farm Fire and Casualty Company, as*

**Page 1 - NOTICE OF REMOVAL OF ACTION; UNDER 28 U.S.C. §1441(b)
(DIVERSITY)**

subrogee of Thomas and Lisa Klotter, v. Costco Wholesale Corporation and Danze, Inc., Case No. 19CV05222.

As grounds for removal, Defendant Costco states as follows:

(1) On January 31, 2019, Plaintiff State Farm Fire and Casualty Company (“Defendant State Farm”) filed a complaint in this action now pending in Lane County Circuit Court as *State Farm Fire and Casualty Company, as subrogee of Thomas and Lisa Klotter, v. Costco Wholesale Corporation, and Danze, Inc.*, Case No. 19CV05222. Pursuant to 28 USC §1446(a), all state court papers served on Defendant Costco at the time of removal, consisting of a summons, complaint and service documents totaling seven pages, are attached hereto as Exhibit 1.

(2) This Notice of Removal is timely filed under 28 USC §1446(b) which provides that a notice of removal must be filed within 30 days after a defendant receives, by service or otherwise, the initial pleading. As of the date of filing this Notice of Removal, Defendant Costco had been served with process. Plaintiff served Defendant Costco through its Registered Agent, CT Corporation System, Salem, Oregon, on March 6, 2019. *See Exhibit 1, p. 7.*

(3) No further proceedings have been had in the Circuit Court of Lane County, Oregon, as of the date of filing this Notice of Removal.

(4) This is a civil action over which this court has original jurisdiction pursuant to 28 USC §1332. This action may be removed pursuant to 28 USC §1441 because the action involves a controversy between a citizen of Oregon and a citizen of Washington (Defendant Costco) and a citizen of Illinois and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

(5) Plaintiff State Farm Fire and Casualty is a corporation licensed to transact insurance business in the State of Oregon and is the subrogee of Thomas and Lisa Klotter

**Page 2 - NOTICE OF REMOVAL OF ACTION; UNDER 28 U.S.C. §1441(b)
(DIVERSITY)**

who are alleged to be residents of Eugene, Oregon (see paragraphs 1 and 2 of Plaintiff's Complaint).

(6) Defendant Costco was, when Plaintiff filed its complaint, and is now, a corporation incorporated under the laws of the State of Washington, with its principal place of business in the State of Washington.

(7) Based upon an on-line search, it is believed that Defendant Danze, Inc., is a duly incorporated corporation in the State of Illinois as alleged in paragraph 5 of Plaintiff's complaint. See Declaration of Costco attorney William H. Stockton, attached hereto as Exhibit 2.

(8) Plaintiff alleges money damages of more than \$75,000, exclusive of interests and costs. *See, Ex. 1, p. 6.*

REMOVAL TO THIS DISTRICT IS PROPER

(9) Pursuant to 28 USC §§1332, 1441, and 1446, removal of the above-captioned state court action to this court is appropriate.

(10) Pursuant to 28 USC §1441(a), removal is made to this court as the district and division embracing the place where the state action is pending.

(11) Defendant Costco is providing to Plaintiff, through its lawyer, written notice of the filing of this Notice of Removal. Defendant Costco is presently unable to provide written notice of the filing of this Notice of Removal on Defendant Danze as the attorney representing Defendant Danze has not appeared and is unknown presently. Furthermore,

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**Page 3 - NOTICE OF REMOVAL OF ACTION; UNDER 28 U.S.C. §1441(b)
(DIVERSITY)**

Defendant Costco is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Lane County, Oregon, where the action is currently pending.

DATED this 15th day of March, 2019.

BRISBEE & STOCKTON LLC

By: /s/ William H. Stockton —

William H. Stockton, OSB #743163
Attorneys for Defendant Costco Wholesale
Corporation
P. O. Box 567
Hillsboro, Oregon 97123
whs@brisbeeandstockton.com
(503) 648-6677

**Page 4 - NOTICE OF REMOVAL OF ACTION; UNDER 28 U.S.C. §1441(b)
(DIVERSITY)**

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19CV05222

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

STATE FARM FIRE AND CASUALTY
COMPANY, as subrogee of Thomas and Lisa
Klotter,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION
and DANZE, INC.,

Defendants.

Case No.: 19CV05222

SUMMONS

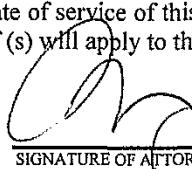
To: Costco Wholesale Corporation, Defendant.

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.



SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

George M. Shumsky 951468
ATTORNEY'S/AUTHOR'S NAME BAR NO.

PO Box 56028

ADDRESS

Portland, OR 97238-6028 503-222-4339
CITY STATE ZIP PHONE

TRIAL ATTORNEY IF OTHER THAN ABOVE

* * * * *

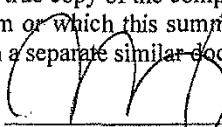
STATE OF OREGON; County of Lane} ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

ATTORNEY OF RECORD FOR PLAINTIFF(S)

* * * * *

TO THE OFFICER OF OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.



ATTORNEY(S) FOR PLAINTIFF(S)

LAW OFFICES OF
SHUMSKY & BACKMAN
1050 SW 6TH AVENUE, SUITE 1100
PORTLAND, OREGON 97204-5083
(503) 222-4339

PROOF OF SERVICE

STATE OF _____
County of _____)

I hereby certify that I made service of the foregoing summons upon the individuals and other legal entities to be served, named below, by delivering or leaving true copies of said summons and the complaint mentioned therein, certified to be such by the attorney for the plaintiff, as follows:

Personal Service Upon Individual(s)

Upon _____, by delivering such true copy to him/her, personally and in person, at _____, on _____, 20_____, at _____ o'clock _____.m.

Substituted Service Upon Individual(s)**

Upon _____, by delivering such true copy to his/her dwelling house or usual place of abode, to-wit: _____ to _____, who is a person over the age of 14 years and a member of the household of the person served on _____, 20_____, at _____ o'clock _____.m.

Upon _____, by delivering such true copy to his/her dwelling house or usual place of abode, to-wit: _____ to _____, who is a person over the age of 14 years and a member of the household of the person served on _____, 20_____, at _____ o'clock _____.m.

Office Service Upon Individual(s)**

Upon _____ at the office which he/she maintains for the conduct of business as _____, by leaving such true copy with _____, the person who is apparently in charge, on _____, 20_____, during normal working hours, at to-wit: _____ o'clock _____.m.

Service on Corporations, Limited Partnerships or Unincorporated Associations
Subject to Suit Under a Common Name

Upon _____, by _____ (NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copy, personally and in person, to _____ who is a/the thereof; OR
 (b) leaving such true copy with _____, the person who is apparently in charge of the office of _____, who is a/the * _____ thereof;

*Specify registered agent, officer (by title), director, general partner, managing agent.

at _____, on _____, 20_____, at _____ o'clock, _____.m.

DATED:

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

SHERIFF

By _____

DEPUTY

DATED: _____

SIGNATURE _____

TYPE OR PRINT NAME _____

ADDRESS _____

PHONE _____

The signature lines on the left should be used only by an Oregon county sheriff or deputy; all other servers complete certificate on the right. The Proof of Service above contains most, but not all, of the methods of service. For example, this form does not include proof of service on a minor or incompetent person. See ORCP 7D.(2) and 7D.(3) for complete service methods on particular parties. **Where substituted or office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the time, date and place at which such service was made. Use S-N Form No. 1149 or equivalent.

LAW OFFICES OF
SHUMSKY & BACKMAN
1050 SW 6th AVENUE, SUITE 1100
PORTLAND, OREGON 97204-5083
(503) 222-4339

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19CV05222

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

5

**STATE FARM FIRE AND CASUALTY
COMPANY**, as subrogee of Thomas and Lisa
Klotter,

6

Plaintiff,

7

vs.

8

**COSTCO WHOLESALE CORPORATION,
and DANZE, INC.**

9

Defendants.

10

11

For its claim for relief against defendants, State Farm Fire and Casualty Company states
and alleges the following:

12

I. PARTIES

13

1.

14

At all times relevant hereto, State Farm Fire and Casualty Company (“State Farm”) was a
corporation licensed to transact insurance business in the state of Oregon.

15

2.

16

At all times relevant hereto, Thomas and Lisa Klotter (“Klotter”) were the owners of real
and personal property at 1670 Duke Ct., Eugene, Oregon (“Subject Property”).

17

3.

18

At all times relevant hereto, State Farm insured the Subject Property pursuant to Policy
No. 37-CR-4122-4.

COMPLAINT-1

SHUMSKY & BACKMAN
1050 SW SIXTH AVENUE, SUITE 1100
PORTLAND, OR 97204
TELEPHONE (503) 222-4339

1 4.

2 At all times relevant hereto, Costco Wholesale Corporation (“Costco”), was a
3 Washington corporation engaged in the sale of toilets and water supply lines for toilets in the
4 state of Oregon.

5 5.

6 At all times relevant hereto, Danze, Inc. (“Danze”), was an Illinois corporation engaged
7 in the import and sale of toilets and water supply lines for toilets in the state of Oregon.

8 **II. FACTUAL BACKGROUND**

9 6.

10 On September 18, 2017, the Subject Property was damaged by water.

11 7.

12 The water originated from a leak at a water supply line to a toilet located in an upstairs
13 bathroom at the Subject Property.

14 8.

15 The toilet and water supply line were manufactured in Southeast Asia by an unknown
16 company and were imported into the U.S. by Danze.

17 9.

18 The toilet and water supply line were sold by Costco’s warehouse #17 in Eugene, Oregon
19 to Klotter on January 2, 2013 and were identified as a “Water Ridge 2PC Toilet,” item number
20 533515.

21 10.

22 The water leak originated at a fracture on the aforesaid water supply line’s plastic nut that
23 connected the water line to the toilet tank.

24
25
26 COMPLAINT-2

SHUMSKY & BACKMAN
1050 SW SIXTH AVENUE, SUITE 1100
PORTLAND, OR 97204
TELEPHONE (503) 222-4339

11.

2 The plastic nut fractured as a result of a design defect, as the plastic nut's wall thickness
3 was unduly thin for the applied stress that it would encounter in its application as part of a water
4 supply line to a toilet.

12.

7 Klotter made a claim under their insurance policy with State Farm for damage to the
8 Subject Property caused by the incident described herein.

13.

10 State Farm indemnified Klotter for said damage in the amount of \$135,541.68 after
11 consideration of a \$1,506.00 deductible for a total loss of \$137,047.68, and thereafter became
12 equitably and contractually subrogated to its insured's rights.

13 **III. LIABILITY**

14 **(Product Liability)**

15.

17 The subject toilet water supply line was unreasonably dangerous and defective and failed
18 to meet the reasonable expectations of Klotter as a result of the design defect described herein
19 that resulted in an unanticipated, uncontrolled water leak.

20.

21 As a result of the defect set forth herein, for which defendants are liable, plaintiff's
22 insureds sustained damage to their property in the amount of \$137,047.68.

23 ///

24 ///

25 ///

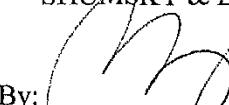
26 COMPLAINT-3

SHUMSKY & BACKMAN
1050 SW SIXTH AVENUE, SUITE 1100
PORTLAND, OR 97204
TELEPHONE (503) 222-4339

1 **WHEREFORE**, plaintiff demands judgment against defendants in the amount of
2 \$137,047.68, together with pre-judgment interest at the rate of 9% per annum, costs,
3 disbursements, and any other relief deemed equitable by this court.
4

5 Dated this 20 day of January 2019.
6

7 LAW OFFICES OF
8 SHUMSKY & BACKMAN

9 By: 

10 George M. Shumsky, OSB #951468
11 Fax: (360) 891-0110
12 E-Mail: george@shumsky-backman.com

13 Trial Attorney: George M. Shumsky
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25
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COMPLAINT-4

SHUMSKY & BACKMAN
1050 SW SIXTH AVENUE, SUITE 1100
PORTLAND, OR 97204
TELEPHONE (503) 222-4339

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19CV05222

AFFIDAVIT OF SERVICE

State of Oregon

County of Lane

Circuit Court

Case Number: 19CV05222

Plaintiff:

**STATE FARM FIRE AND CASUALTY COMPANY, as subrogee of
Thomas and Lisa Klotter**

vs.

Defendant:

COSTCO WHOLESALE CORPORATION and DANZE, INC.

For:

George M. Shumsky
Shumsky and Backman - OR
P.O. Box 56028
Portland, OR 97238-6028

Received by MALSTROM'S PROCESS SERVING CO. on the 5th day of March, 2019 at 2:18 pm to be served on **COSTCO WHOLESALE CORPORATION R/A CT CORPORATION SYSTEM, 780 COMMERCIAL STREET SE, SUITE 100, SALEM, OR 97301**.

I, Bobby Chandler, being duly sworn, depose and say that on the 6th day of March, 2019 at 9:05 am, I:

SERVED the within named **COSTCO WHOLESALE CORPORATION R/A CT CORPORATION SYSTEM at 780 COMMERCIAL STREET SE, SUITE 100, SALEM, OR 97301** by personally serving a true copy of the **Summons and Complaint** upon **RYLYNN POOLE**, who is a clerk on duty in the office of the Registered Agent and who is authorized to accept service.

I declare I am a resident of the State of Oregon. I am a competent person 18 years of age or older and not a party to or attorney in this proceeding. I certify that the person, firm, or corporation served is the identical one named in this action. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

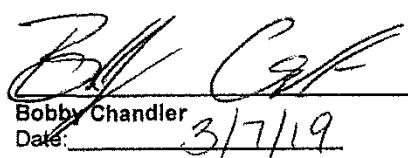
Subscribed and Sworn to before me on the 11 day of March 2019 by the affiant
who is personally known to me.

NOTARY PUBLIC, State of Oregon
County of Malin



OFFICIAL STAMP
REBECCA LEA LUNDIN
NOTARY PUBLIC - OREGON
COMMISSION NO. 942014
MY COMMISSION EXPIRES AUGUST 17, 2019

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Bobby Chandler
Date: 3/7/19

MALSTROM'S PROCESS SERVING CO.
155 Culver Lane S
Salem, OR 97302
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Ref: 106-0056



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6 Attorneys for Defendant Costco Wholesale Corporation
7
8
9

10 **UNITED STATES DISTRICT COURT**
11
12 **DISTRICT OF OREGON**
13
14 **EUGENE DIVISION**

15 STATE FARM FIRE AND CASUALTY
COMPANY, as subrogee of Thomas and
16 Lisa Klottter,

Civil No.

17 Plaintiff,

**DECLARATION OF
WILLIAM H. STOCKTON**

18 v.

19 COSTCO WHOLESALE CORPORATION,
20 and DANZE, INC.,

21 Defendants.

22 I, WILLIAM H. STOCKTON, declare under penalty of perjury as follows:

23 That I am the attorney for Defendant Costco Wholesale Corporation in the above-
24 entitled matter and I have made inquiry of the Plaintiff's attorney regarding service of the
25 Complaint on Defendant Danze, Inc., and have not been advised that an appearance has
26

been filed and no attorney has appeared as attorney of record. That I have done a computer search of Defendant Danze, Inc., which has confirmed that Defendant Danze, Inc., is an Illinois corporation as alleged in Plaintiff's Complaint. That I make this declaration in support of Defendant Costco's removal to federal court and the requirement of complete diversity to remove the matter to federal court.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 15th day of March, 2019, at Hillsboro, Oregon.

/s/ William H. Stockton
William H. Stockton

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **NOTICE OF REMOVAL OF ACTION**;

UNDER 28 USC §1441(b) (DIVERSITY) on the following party(ies):

George M. Shumsky
Shumsky & Backman
1050 S. W. Sixth Avenue
Suite 1100
Portland, Oregon 97204

Attorney for Plaintiff

by mailing a true and correct copy thereof to said party(ies) on the date stated below.

DATED this 15th day of March, 2019.

/s/ William H. Stockton
William H. Stockton, OSB #743163
whs@brisbeeandstockton.com
Attorneys for Defendant Costco